IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 2468 of 2007()

AGAINST THE ORDER DATED 05/05/2007 IN S.C. I/07 IN SC.451/2006 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM

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REVN. PETITIONER:

ASOKAN,S/O.MUTHUSWAMI,
KATTUMANNARKUDIKOVIL STREET,
CHIDAMBARAM VILLAGE,KOODALLUR DISTRICT,
TAMILNADU.

BY ADV. SRI.T.RAVIKUMAR

RESPONDENTS: RESPONDENT

INSPECTOR OF POLICE,CBI/SCB/CHENNAI
(CRIME NO.RC3 (S)/2002/CBI/SCB/CHENNAI).

BY ADV. SRI.S.SREEKUMAR,S.C.,C.B.I.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON 09/08/2007 PASSED THE FOLLOWING:

V.RAMKUMAR,J.

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CRL.R.P. 2468 of 2007

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Dated, this the 8th day of August 2007

O R D E R

In this Revision filed under Sections 397 and 401 Cr.P.C. the revision petitioner who is the 3rd accused in Sessions Case Nos. 451 of 2006 and 1 of 2007 on the file of the 4th Addl. Sessions Court, Ernakulam challenges the order dated 5-5-2007 passed by the said court framing a charge against the revision petitioner and others for offences punishable under Sections 170, 419,420 and 120 B read with 34 I.P.C.

2. Assailing the impugned order Adv. Sri. T.Ravikumar, th learned counsel for the revision petitioner made the following submissions before me:-

This case arises from C.C. No. 47 of 2004 before the J.F.C.M. Changanassery where one K.J. Thomas filed a private complaint on 7-9-2001 against five accused persons namely:

1. T. Dakshinamoorthi,
2. Raja Arun Kumar (S/o. Dakshinamoorthi)
3. Ashokan (the petitioner herein)
4. Velu (since deceased) and
5. Jayalekshmi

and four other persons identifiable by sight. In the said complaint it was alleged that the 9 accused persons committed offences punishable under Sections 120 B, 170, 380, 389, 390 and 420 I.P.C. The complaint was forwarded to the Changanassery Police Station which registered a case Crime No.

637 of 2001. Thereafter, the complainant K.J. Thomas filed O.P. No. 10072 of 2002 before this Court for a direction to the C.B.I to take over the investigation in Crime No. 637 of 2001 of Changanassery Police Station. The investigation of the case was ordered to be taken over by the C.B.I. and the C.B.I. took over the investigation on 28-5-2002 culminating in the filing of charge before the Chief Judicial Magistrate, Ernakulam for the aforementioned offences and the registration of C.C. 47 of 2004. While so, Shaji S. Mukkadan, the de facto complainant in C.C. 47 of 2004 approached this Court by filing Crl.M.C. 2287 of 2006 under Section 482 Cr.P.C. for transferring C.C. 47 of 2004 to the Sessions Court to be tried along with S.C. 629 of 2004. The said application was allowed by this Court. Thereafter the petitioner filed Crl.M.C. 135 of 2007 before this Court for quashing the crime in C .C. 47 of 2004. As per order dated 2-2-2007 this Court directed the Sessions Court to consider the plea of discharge under Section 227 Cr.P.C. Thereafter the petitioner filed M.P. No. 1184 of 2007 before the Sessions Court seeking a discharge. On 24-3-2007 the Sessions Judge dismissed the discharge petition on the ground that a charge has already been ordered to be framed against the accused. Subsequently, the court below has framed the charge as per the impugned order. The allegation in the charge that the revision petitioner had entered into a criminal conspiracy with the other accused in the case so as to cheat K.J.Thomas who was thereby induced to deliver a sum of Rs. 32.85 lakhs to the accused persons causing

wrongful loss to K.J. Thomas, is false. Actually the petitioner herein was kidnapped by Shaji S. Mukkadan and his men on 7-5-2001 from Kumali. Besides the petitioner the other persons who were kidnapped by Shaji were :

1. Akash Babu and
2. Gayathiri (who are the grandchildren of Dakshinamoorthi and his wife Jayalekshmi)
3. Jayalekshmi
4. Arun S/o. Dakshinamoorthy and
5. Velu (since deceased).

(Out of the aforementioned six persons who were kidnapped, Rajan Arun Kumar, Asokan the petitioner herein, Velu and Jayalekshmi were subsequently arraigned as accused Nos. 2,3,4 and 5 in the case. Dakshinamoorthi, the husband of Jayalekshmi was made the first accused. On coming to know of the kidnapping, Dakshinamoorthi filed a complaint before the Kodaikkanal Police Station which was registered as Crime No. 247 of 2002 for an offence punishable under Section 363 I.P.C. against Shaji S. Mukkadan. Raja Chandra Mohan, the father of Akash Babu and Gayathri filed a habeas corpus petition as No. 854 of 2001 before the High Court of Madras. In that petition the Inspector of Police, Kodaikkanal filed a counter affidavit on 30-07-2001 pointing out that the kidnapping had taken place at Kumali . The Madras High Court thereupon closed the habeas corpus petition permitting Raja Chandra Mohan to pursue other remedies. Raja Chandra Mohan then filed O.P. No. 23395 of 2001 (habeas corpus) before this court alleging that his daughter and grandchildren and others were illegally detained by

Shaji S. Mukkadan. The Superintendent of Police, Kottayam filed a counter affidavit in the above habeas corpus petition virtually supporting the allegation of kidnapping by Shaji S. Mukkadan. Thereupon K.J.Thomas who is none other than the father-in-law of Shaji S. Mukkadan filed the present complaint before the J.F.C.M. , Changanassery resulting in the registration of Crime No. 637 of 2001 of Changanassery Police Station. In the habeas corpus petition, consequent on the direction by this Court, the petitioner who was produced before a Division Bench of this Court was forwarded to the Registrar of this Court for recording his statement. Accordingly, a statement was recorded from the petitioner and the other detenues by the Registrar. Annexure 4 comprise of those statements as per which the petitioner herein and others were kidnapped and kept under illegal detention by Shaji and others. It was while disposing of the said habeas corpus petition that this court directed the C.B.I. to take over the investigation and conduct a detailed investigation in the matter. It was that case which has culminated in S.C. 629 of 2004 before the 4th Addl.Sessions Court, Ernakulam. When the petitioner herein and others were held captives by Shaji S. Mukkadan, the case of the C.B. I that prior to the kidnapping incident the petitioner had falsely impersonated himself as C.B.I. officer and cheated the de facto complainant K.J. Thomas by taking away Rs. 32.85 lakhs is nothing but a false story. Apart from the statement of K.J. Thomas there is no evidence to show that either he or Shaji S.

Mukkadan has lost 32.85 lakhs. The very fact that K.J.Thomas had kept silent for a long time strengthens the case of the petitioner that the present case filed by him is only to see that Shaji S. Mukkadan escapes from S.C. 629 of 2004. There is nothing to attract the offence under Section 420 I.P.C. since it is not even prima facie shown that the petitioner had deceived anybody or had induced anybody through deception to deliver any property and that too dishonestly. If the case of K.J. Thomas is believed it was he who was cheated, but the present case is that it was Shaji S. Mukkadan who was cheated. The story of K.J. Thomas that A1 and others decamped with for Rs. 32.85 lakhs has not been explained. There has been no recovery of any property including gold biscuits from the accused. Raja Chandramohan was made an accused by the C.B.I. only on 29-12-2003. In the complaint filed on 8-9-2001 by K.J.Thomas Raja Chandramohan was not an accused. Since K.J.Thomas has died in the meanwhile Shaji S. Mukkadan is now attempted to be made the complainant. He is said to have been cheated by the very same persons who were kidnapped by him. It is not enough that the prosecution is able to show that the accused might have committed the alleged offence. The prosecution has to prima facie show that the accused committed the offence although the degree of proof at this stage is not of such extent that prosecution has to show that accused has committed the offences. Applying the tests laid down by the Apex Court in **State of Maharashtra v. Som Nath Thapa** - **1996 Crl.L.J.**

2448, Dilawar Babu Kurane v. State of Maharashtra, AIR 2002 SC 564, Dattatray Krishnaji Ghule v. State of Maharashtra - 2007 Crl. L,.J. 1454 , Soma Chakravarty v. State Through CBI - 2007 (4) Supreme 280 and Kurian v. State of Kerala - 2007 (3) KLT 36, there was no case for framing a charge against the petitioner.

3. I am afraid that I cannot agree with the above submissions. The case which has being unravelled through the investigation by the C.B.I. can be summarised as follows:-

K.J. Thomas who is now no more was the father-in-law of Shaji S. Mukkadan. Shaji S. Mukkadan is a gold merchant residing at Changanasseri. The first accused Dakshinamoorthy and his son Raja Arun Kumar @ Arun (A2) masquerading themselves as members of muslim community, reached Kumali on 4-5-2001 and got acquainted with one Sajan, the proprietor of Italia Tourist Home at Kumali. A1 and A2 were pretending that they were traders in gold biscuits. Sajan the proprietor of Italia Tourist Home is a relative of Shaji S. Mukkadan . The first accused had brought his wife Jayalekshmi and two grant children Akash Babu and Gayathri along with him and they were staying at Rolex Hotel, Kumali. Asokan, the petitioner herein is a nephew of Dakshinamoorthy. They had also brought A4 Velu a friend of theirs to Kumali. On 7-5-2001 Shaji S. Mukkadan came to Kumali and negotiated with A2. It was agreed that gold biscuits valued at 32.85 lakhs would be delivered to Shaji S. Mukkadan at Changanassery where he resides. Raja Chandramohan (A7)

and Pushkaran (A6 who is a friend of A1, Dakshinamoorthy) joined A1 at Kumali on 7-5-2001 . Second Accused and Shaji S. Mukkadan left for Changanassery for transacting the deal. On the next day at about 7 p.m. on 8-5-2001 A1 also reached the residence of Shaji S. Mukkadan at Changanassery. A1 showed Shaji one or two gold biscuits as sample to convince the latter. Thereupon Shaji S. Mukkadan handed over Rs. 32.85 lakhs to A1 Dakshinamoorthy and his son A2 as consideration for the sale of 68 gold biscuits. When the gold biscuits were about to be exchanged A3 (Asokan) A4 (Velavan Nainan @ Velu and A6 (Pushkaran) falsely masquerading themselves as C.B.I. officers suddenly appeared there and arrested A1 Dakshinamoorthy and A2 Arun and took them away thereby allowing them to escape with 32.85 lakhs. The above accused persons were really staging a false arrest of A1 and A2 on the allegation that the latter were associated with L.T.T.E. Since A1 and A2 were not seen going in the company of the fake C.B.I. officials, Shaji S. Mukkadan and others got suspicious and caught hold of the fake C.B.I. officials i.e. A3, A4 and A6. They then went to Kumali in search of Jayalekshmi and her grandchildren hoping that A1 and A2 would join them. Shaji S. Mukkadan and his associates took the petitioner herein, Jayalekshmi and grandchildren etc. as captives and detained them in their custody with a view to coerce A1 to return the booty. But A1 and A2 had fled to Kodaikkanaal and they lodged a complaint before Kodaikkanal Police against Shaji S. Mukkadan and others alleging abduction

punishable under Sec. 363 I.P.C. The Kodaikkanal police registered Crime No. 247 of 2004. Raja Chandranmohan (A7) filed a habeas corpus petition before the Madras High Court alleging that his kith and kin were wrongfully detained by Shaji S. Mukkadan and others. Consequent on the Kodaikkanal Police reporting to the High Court that the incident took place within the limits of the State of Kerala, the Madras High Court closed the habeas corpus petition. On 10-8-2001 Raja Chandramohan preferred a complaint before the Changanassery police station alleging that his kith and kin were kidnapped by Shaji S. Mukkadan and others. The Changanassery police registered Crime No. 547 of 2001 for an offence punishable under Sec. 363 I.P.C. In the meanwhile, Raja Chandramohan filed O.P. 23395 of 2001 before this Court against Shaji S. Mukkadan and others for a Writ of Habeas Corpus for the production of his kith and kin amounting to five who were allegedly abducted on 7-5-2001. On 11-9-2001 Asokan and Velu (A3 and A4) were traced by the Kerala police from Shimoga and brought to Ernakulam on 13-9-2001. Jayalekshmi (A5 and the two grandchildren of Dakshinamoorthy (A1) (A1) were traced by the Kerala Police from a place within the limits of Ulanthoorpet Police Station in Tamil Nadu and they were produced before this Court on 14-9-2001. On the production of the detenues before this Court, the Registrar of this Court was directed to record their statements and Annexure A4 series are their statements so recorded. As this court had some hunch that the detenues were hiding

something and were prevaricating, this Court directed the C.B.I to take over the investigation in the matter. In the meanwhile, K.J. Thomas the father-in-law of Shaji S. Mukkadan had filed a private complaint as C.M.P. 5685 of 2001 before the J.F.C.M., Changanassery on 8-9-2001 alleging offences punishable under Sections 170, 318, 120, 389, 390 and 420 I.P.C. against Dakshinamoorthy (A) and others. The said complaint was forwarded to the Changanassery Police Station under Section 156 (3) Cr.P.C. It led to the registration of Crime No. 637 of 2001 by the Changanassery Police for the aforementioned offences. In the early morning of 10-5-2001 the deadbody of a male was seen in the Pallathuruthy river. The Nedumudi police registered Crime No. 31 of 2001 under the caption "unnatural death" under Section 174 Cr.P.C. The investigation of the said case revealed that the deadbody was that of Pushkaran (A6) and that he was tortured during the night of 8-5-2001 and 9-5-2001 by Shaji S.Mukkadan, Sajan and others so as to force him to divulge the hiding place of A1 and others who had decamped with 32.85 lakhs and the gold biscuits. The Nedumudi police have charge-sheeted them for offences punishable under Sec. 304 Part II and Sec. 202 I.P.C..

4. The investigation conducted by the C.B.I. into Crime No. 637 of 2001 of Changanassery Police Station has revealed that the petitioner herein and others were throwing the local police off the scent. The local police also was to some extent giving misleading versions. The allegation of

Dakshinamoorthi before the Kodaikkanal police that the revision petitioner herein (A3) was a captive of Shaji S. Mukkadan from 7-5-2001 was false. The impersonation by the petitioner herein and others as C.B.I. official was on 8-5-2001 and it was thereafter that they became captives of Shaji S. Mukkadan and others. The C.B.I. has produced the statements of 50 witnesses, 23 documents and material objects including the cap used by A1 for disguising himself as a muslim. Sessions Case Nos. 451 of 2006 and 1 of 2007 in which charge has been framed by the impugned order arise out of Crime No. 637 of 2007 of Changanassery Police Station for offences punishable under Sections 120 B, 170 , 380, 389, 390 and 420 I.P.C. The corresponding C.B.I. case Crime No. is R.C. 3/S/02/CBI/SCB/Chennai. This was a case which was registered in pursuance of the private complaint filed by K.J. Thomas before J.F.C.M. Changanassery.

5. It is settled law that at the stage of framing charge the Court need only prima facie consider whether there is sufficient ground for proceeding against the accused. The test to determine whether there is a prima facie case constituting sufficient ground to proceed against the accused would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Vide **Union of India v. Prafullakumar Samal - AIR 1979 SC 306.** Where the materials placed before court disclose a grave suspicion against the accused and which has not been properly explained the court

will be fully justified in framing a charge against the accused and proceeding to trial.***(See Almohan Das v. State of M.P. - AIR 1970 S.C. 863, K.P. Raghavan v. M.H. Abbas – AIR 1967 S.C. 740, State of Bihar v. Ramesh Singh – 1977 SCC Crl. 533, Union of India v. Praffulla Kumar Samal and Anr. - 1979 (3) SCC 4. In Kanti Bhadra Shah and Anr. v. State of West Bengal – 2000 (1) SCC 722).*** At this stage the court is not required to appreciate evidence and arrive at a conclusion that the materials produced by the prosecution are sufficient to convict the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. **(Vide State of M.P. v. S.B. Johari - AIR 2000 SC 666 and Lalu Prasad v. State of Bihar - 2007 (1) SCC 49).**

6. The court below was on the materials placed before it fully justified in dismissing the petition filed by the revision petitioner for discharge and in framing a charge against him.

This Revision is accordingly dismissed.

V. Ramkumar, Judge.

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